

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PACIFIC SOUND RESOURCES, *et al.*,

Plaintiffs,

v.

THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY, *et al.*,

Defendants.

No. C04-1654L

ORDER TO SHOW CAUSE

This matter comes before the Court *sua sponte*. On July 30, 2004, defendant The Burlington Northern and Santa Fe Railway Company ("BNSF") asserted counterclaims against plaintiffs Pacific Sound Resources ("PSR") and The Port of Seattle ("The Port"). See Dkt. #7 (Answer, Counter-claim, and Cross-claim of Defendant The Burlington Northern and Santa Fe Railway Company) at 14-23. In light of the Court's orders granting BNSF's motions for summary judgment against The Port (Dkt. #38) and PSR (Dkt. #59), defendant BNSF is **ORDERED TO SHOW CAUSE** whether it intends to pursue or dismiss its counterclaims against The Port and PSR, or whether these counterclaims were mooted by the Court's orders. Defendant BNSF shall file its responsive memorandum no later than **March 23, 2007**. Upon resolution of BNSF's counterclaims, the Court intends to enter judgment as follows:

"It is Order and Adjudged:

1) Judgment is entered in favor of defendant The Burlington Northern and Santa Fe

ORDER TO SHOW CAUSE

1 Railway Company on plaintiff Pacific Sound Resources' claims against defendant The  
2 Burlington Northern and Santa Fe Railway Company;


3 2) Judgment is entered in favor of defendant The Burlington Northern and Santa Fe  
4 Railway Company on plaintiff The Port of Seattle's claims against defendant The Burlington  
5 Northern and Santa Fe Railway Company;

6 3) Defendant The Burlington Northern and Santa Fe Railway Company's counterclaims  
7 against plaintiff Pacific Sound Resources and plaintiff The Port of Seattle are dismissed as moot.

8 4) All claims, counterclaims, and cross-claims asserted by or against J.H. Baxter & Co.,  
9 a California limited partnership, J.H. Baxter & Co., a California corporation, and J.H. Baxter &  
10 Co., Inc., a California corporation, are dismissed with prejudice, without costs, and with each  
11 party bearing its own attorney's fees; (2) any equitable share of liability attributable to these  
12 Baxter entities, or to any of them, shall be allocated to plaintiff Pacific Sound Resources; and (3)  
13 The Burlington Northern and Santa Fe Railway Company's liability, if any, to plaintiffs shall be  
14 reduced by the amount of the equitable share of liability allocated to Baxter, in a manner  
15 consistent with the Washington Model Toxics Control Act and other applicable law."

16 The parties are ORDERED TO SHOW CAUSE why judgment in the form stated above  
17 should not be entered, or propose amendments to the proposed judgment. The parties shall file  
18 their responsive memoranda no later than **March 23, 2007**. The Clerk of Court is directed to  
19 place this Order to Show Cause on the Court's calendar for Friday, March 23, 2007. Because  
20 the Court considers BNSF's counterclaims outstanding, final judgment as to all claims and  
21 parties in this matter will not be entered until after the Court receives the parties' memoranda in  
22 response to this Order to Show Cause.

23 DATED this 7th day of March, 2007.

24   
25 Robert S. Lasnik  
26 United States District Judge